

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF IDAHO

IN RE)	
)	
MICHAEL and BARBARA DOWNEY,)	Case No. 98-20075
)	
)	
Debtors.)	
)	SUMMARY ORDER
)	REGARDING COSTS
_____)	
)	
LOUIS and MARILYN PALMER,)	
)	
Plaintiffs,)	
)	
vs.)	Adversary No. 98-6128
)	
MICHAEL and BARBARA DOWNEY,)	
)	
Defendants,)	
)	
_____)	

HONORABLE TERRY L. MYERS, UNITED STATES BANKRUPTCY JUDGE

Bruce A. Anderson, ELSAESSER JARZABEK ANDERSON MARKS & ELLIOTT,
Sandpoint, Idaho, for Plaintiffs.

Dan O'Rourke, SOUTHWELL & O'ROURKE, P.S., Spokane, Washington, for
Defendants.

Plaintiffs received judgment in this litigation on November 18, 1999, and seek an award of costs and attorneys' fees. Defendants objected to any award of attorneys' fees or costs.

Hearing was held on January 11, 2000 at which time Plaintiffs withdrew their request for attorneys' fees. However, the issue of costs remains before the Court. These costs are asserted in the aggregate amount of \$2,345.70.

DISCUSSION

The request is asserted under Fed.R.Bankr.P. 7054 and Fed.R.Civ.P. 54(d)(1). Federal Rule of Civil Procedure 54(d) is not applicable; Fed.R.Bankr.P. 7054 incorporates by reference only Fed.R.Civ.P. 54 (a) through (c). See, *10 Collier on Bankruptcy*, ¶ 7054.05, p.7054-8 (15th ed. 1999). However, Fed.R.Bankr.P. 7054 contains its own provision regarding costs, Rule 7054(b), and it expressly applies to adversary proceedings.

Plaintiffs also rely on 28 U.S.C. § 1920 which allows "a judge . . . of any court of the United States . . ." to tax certain costs. See 28 U.S.C. § 1920(1) through (6). In general, the term "court of the United States" has been interpreted in the Ninth Circuit as excluding bankruptcy courts.¹ Thus, it appears that the language in § 1920,

¹ See, e.g. *Perroton v. Gray (In re Perroton)*, 958 F.2d 889, 896 (9th Cir. 1992) (bankruptcy court cannot waive fees under 28 U.S.C. § 1915 because it is not a "court of the United States" under 28 U.S.C. § 451); *Determan v. Sandoval (In re Sandoval)*, 186 B.R. 490, 496 (9th Cir. BAP 1995) (holding of *Perroton* applied to 28 U.S.C. § 1972.)

allowing “any court of the United States” to award costs would not include bankruptcy courts.²

It is not necessary, however, for the Court to resolve this point in order to address the request for costs herein. Rule 7054(b), which clearly does apply, provides as follows:

(b) Costs. The court may allow costs to the prevailing party except when a statute of the United States or these rules otherwise provides. Costs against the United States, its officers and agencies shall be imposed only to the extent permitted by law. Costs may be taxed by the clerk on one day’s notice; on motion served within five days thereafter, the action of the clerk may be reviewed by the court.

Award of costs under Rule 7054(b) is discretionary. *Young v. Aviva Gelato Inc. (In re Aviva Gelato, Inc.)*, 94 B.R. 622, 624 (9th Cir. BAP 1988); *Collier*, supra at

¶ 7054.05. What, then, guides the Court’s discretion?

Although they are not referred to or cited by counsel for either Plaintiffs or Defendants, the Local Rules of this Court bear significantly on this issue. Local Bankruptcy Rule 7054.1 provides:

Upon entry of judgment in an adversary proceeding, costs shall be claimed, taxed, objected to, and reviewed as provided in the Local Rules of the District Court for the District of Idaho.

Local Rule 54.1(a) of the District Court in turn provides the procedure under which a request for costs shall be made and substantive rules for allowance.

² This view is not universally held. 10 *Collier on Bankruptcy*, ¶ 7054.05, p. 7054-8 (15th ed. 1999) (bankruptcy courts may tax costs pursuant to § 1920).

Plaintiffs' submissions do not meet the procedural requirement of D.Id.L.R. 54.1(a) or clearly specify which portions of D.Id.L.R. 54.1(b) support or provide for allowance. Even though Defendants have not objected on this score, the Court finds itself unable to properly evaluate the costs claimed under the guidelines of D.Id.L.R. 54.1(a) and (b) given the nature and quality of the request.³

Based thereupon, costs are disallowed at the present time, without prejudice to Plaintiffs' filing and service of an amended submission in compliance with D.Id.L.R. 54.1 and LBR 7054.1. Such amended request for allowance of costs shall be filed and served by Plaintiffs within ten (10) days of this Order. If so filed, Defendants shall have ten (10) days from service thereof within which to file any objection. If an amended request is not filed and served by Plaintiffs within the time stated, all costs will be disallowed.

Dated this 19th day of January, 2000.

³ Local Rule 54.1(b) sets forth nine categories of taxable costs including Clerk's fees and service fees; trial transcripts; deposition costs; witness fees, mileage and subsistence; exemplification and copies; maps, charts, models, photographs, etc.; interpreter fees; and docket fees. In reviewing Plaintiffs' pleadings, it appears that the amount of \$150.00 for the adversary filing fee is properly allowable, but the other \$47.00 "filing fee" is inadequately explained. It further appears the following costs are potentially allowable, provided they can be tied to express service or witness expense provisions of the Rule: \$45.00 (Joe Haugen 10-10-98); \$45.00 (Bob Beck 10-13-98); \$45.00 (Herb Laughlin 4-1-99); \$45.00 (Mike Biben 4-1-99); \$75.00 (Roger Zarowney 4-22-99). Some of the deposition costs asserted are also potentially allowable, but only to the extent D.Id.L.R. 54.1(b)(3) provides. The faxes, copying, postage, and other miscellaneous costs claimed by Plaintiffs do not appear proper under the Rule. The burden to establish allowance is in all regards upon Plaintiffs.

